



FILED

04-03-07
11:48 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO STRIKE
MARKET STRUCTURE ISSUES**

Summary

This Administrative Law Judge's (ALJ) ruling grants in part and denies in part the Motion to Strike brought by Pacific Gas and Electric Company (PG&E) concerning market structure issues in the testimony of Alliance for Retail Energy Markets (AReM), Constellation Energy Commodities Group, et al.

(Constellation), Constellation, Reliant Energy (Reliant) and Mirant California LLC, et al. (Mirant) and NRG Energy, Inc. (NRG) (collectively, Competitive Market Advocates). The motion to strike is granted as to testimony on "slice-of-load" proposals and alternatives to the hybrid market, but testimony on solutions to flaws in the current hybrid market structure may remain. Further discussions of what will be within or outside the scope of the issues to be litigated and resolved in this phase of the proceeding will take place at the prehearing conference (PHC)/status conference scheduled for April 24, 2007.

Motion to Strike

PG&E requested that all AReM, Constellation, Competitive Market Advocates and NRG testimony on hybrid markets and slice-of-load proposals be

stricken as being outside the scope of the proceeding as established in the Order Instituting Rulemaking (OIR) on February 16, 2006, and the scoping memo and Assigned Commissioner's Ruling (ACR) issued on September 25, 2006.

PG&E correctly recited sections from the OIR and the ACR wherein the Commission signaled that it was not ordering a comprehensive review of the effectiveness of the hybrid market structure, the slice of load proposal or the future structure of the retail market. However, the procurement practices of the utilities and ways to identify flaws in the current system and proposals to improve the practices are within the scope of the proceeding.

PG&E identified specific sections of AReM's testimony (Mara) and NRG's testimony (Comnes) and all the testimony of Lynch for Constellation and all the testimony of Schnitzer for Competitive Market Advocates that PG&E seeks to strike.

A Joint Response to the motion to strike was filed by Mirant, Constellation, Reliant, NRG, AReM and the Western Power Trading Forum (WPTF) (Mirant et al.). In summary, the response states that (1) the utilities themselves put the issue of the effectiveness of the hybrid market at issue in the proceeding through their testimony and it is appropriate that the competitive market parties have an opportunity to respond; (2) that it is necessary to address the impacts of the hybrid market procurement model before the Commission approves the long-term procurement plans (LTPP); (3) that a discussion of problems or flaws in the current system are within the scope of this proceeding; (4) there is no other open proceeding that is addressing the existing market structure; and (5) identifying flaws in the current system requires that potential solutions be considered as well.

Mirant et al. argue that both PG&E and Southern California Edison Company (SCE) criticize the effectiveness of the hybrid market in their testimony and they suggest modifications for the Commission to adopt to improve the system. Mirant et al. want the opportunity to present testimony that responds to the utilities suggestions for improving the procurement framework, and they argue that “striking the testimonies at issue from this proceeding could deny parties the opportunity to ask the Commission to consider hybrid market flaws in any [other] pending Commission proceeding.” Mirant et al. contend that the utilities’ procurement and cost recovery model is in conflict with a competitive market model that the Commission endorsed as the preferred end state for California in Decision (D.) 06-07-029, and they want an opportunity to be heard on this subject.

Discussion

With the massive amount of testimony that has been received from the three utilities, along with supplements, and then with over 30 sets of testimony served by intervenors, it is hard to carefully go through all the material with an eye to picking and choosing specific language that is within or without the scope of this OIR. It is also hard to separate out what is a discussion of the problems with the current procurement system and suggestions for addressing those problems from a wholesale presentation of a new procurement paradigm. In the OIR and the ACR, we invited a discussion of ways to improve upon the current procurement mechanism, especially vis-a-vis ways to make it more competitive between the utilities and the merchant generators. However, we also signaled that we were not open to considering novel alternatives to the hybrid market and the RFO procurement system at this time.

Therefore, we find that testimony on hybrid markets in general will remain in scope and we deny PG&E's motion to strike that testimony. The testimony of AReM, Chapter 1 at 4:18-7:7, and the testimony of Michael Schnitzer remains in the proceeding. However, PG&E's motion to strike testimony on slice-of-load proposals is granted. The testimony of Mary Lynch for Constellation and G. Alan Comnes at 15:17-16:5 for NRG is stricken. By ruling that this testimony is out of scope, we are not taking a discussion of hybrid market flaws away from intervenors. However, we are not allowing a wholesale, major overhaul of the market structure. Instead, the motion to strike is granted to maintain control of what is already a broad and complex proceeding. This ruling does not pre-judge the merits of any testimony presented, but attempts to limit what the Commission will rule on as part of its review of the LTPPs.

IT IS RULED that Pacific Gas and Electric Company's Motion to Strike is granted in part and denied in part. The Motion to Strike testimony on hybrid markets is denied and the testimony of Alliance for Retail Energy Markets and Michael Schnitzer for Constellation Energy Commodities Group, et al. remains in the scope of this proceeding. The Motion to Strike testimony on slice-of-load is granted and the testimony of Mary Lynch on behalf of Constellation et al. and G. Alan Comnes (15:17-16:5) is stricken as outside the scope of this proceeding.

Dated April 3, 2007, at San Francisco, California.

/s/ CAROL A. BROWN

Carol A. Brown
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated April 3, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid